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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMIL NAJM MUHAMMAD,

Defendant and Appellant.

A134494

(Humboldt County
Super. Ct. No. CR1101175)

A jury convicted Jamil Najm Muhammad of making criminal threats and false imprisonment, among other offenses. Finding separate punishment could not be imposed for the false imprisonment conviction because it was part of an indivisible course of criminal conduct, the court imposed a concurrent sentence for that offense. We modify the judgment to strike the concurrent sentence and stay sentence on the false imprisonment conviction instead.

I. BACKGROUND

Defendant was charged by amended information with (1) criminal threats (Pen. Code,¹ § 422; count 1) and corporal injury to a cohabitant (§ 273.5, subd. (a); count 2) arising from an incident occurring on March 14, 2011; and (2) criminal threats (§ 422; count 3) and false imprisonment by violence (§ 236; count 4) arising from an incident occurring on February 23, 2011. The information alleged as to count 1 defendant personally used a deadly weapon (a wrench). (§ 12022, subd. (b)(1).) The information

¹ All statutory references are to the Penal Code.

also alleged defendant suffered three prior “strike” convictions (§ 667, subds. (b)–(i)) and six prison prior convictions (§ 667.5, subd. (b)).

A. *Facts*

We briefly summarize only the facts relevant to counts 3 and 4. Defendant and the victim were living together in a motor home in Eureka on February 23, 2011. They had been drinking all day and were arguing about the victim’s dog, which defendant would not allow inside the motor home. The victim became fearful of defendant at one point during the evening and walked out, but he followed her and coaxed her to come back to the motor home. Later, defendant was lying on the bed watching television while the victim was in the kitchen. She again became fearful of defendant and told him she wanted to leave. Defendant jumped up, locked the door, and threatened to hurt the victim “real bad” if she tried to leave. The victim called 911 on her mobile phone and furtively tried to convey to the dispatcher she needed help but could not talk. After the call, she waited for about 30 minutes for the police to arrive. Defendant said nothing to her during this time.

Once the police announced their presence and knocked, defendant got up to make sure the door was locked and asked if the police had a warrant. After the police repeatedly asked him to open the door, defendant eventually opened it after 10 minutes, at which time the police reached in and grabbed him.

B. *Verdict, Sentence, and Appeal*

The jury returned guilty verdicts on all counts and found the section 12022, subdivision (b)(1) allegation true. The court found all three strike priors and five of the six prison priors to be true. On January 19, 2012, the trial court sentenced defendant to 25 years to life followed by a determinate term of eight years. The court imposed a three-year consecutive sentence on count 3 as part of the eight-year determinate term.² Finding defendant engaged in a single course of conduct on February 23, 2011, it imposed a

² The other five years consisted of five one-year consecutive sentences under section 667.5, subdivision (b) for defendant’s prison prior convictions.

further three-year term on count 4, but made the term concurrent to the term on count 3. On January 25, 2012, the court sentenced defendant to an additional one-year consecutive term under section 12022, subdivision (b)(1), for a total sentence of 34 years to life. This timely appeal followed.

II. DISCUSSION

Defendant contends the trial court erred in not staying sentence on count 4 under section 654 instead of imposing a concurrent sentence on that count. The Attorney General concedes the point, and we agree.

Section 654³ prohibits the imposition of punishment for more than one violation arising out of an act or omission which is made punishable in different ways by different statutory provisions. (*People v. Masters* (1987) 195 Cal.App.3d 1124, 1127.) This prohibition applies not only where there is literally a single act but “also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction.” (*People v. Perez* (1979) 23 Cal.3d 545, 551.)

For purposes of section 654, a concurrent sentence is considered punishment because the defendant is deemed subject to the terms of both sentences even though they are served simultaneously. (*People v. Cruz* (1995) 38 Cal.App.4th 427, 434.) Because it is undisputed defendant engaged in a single course of conduct when he made criminal threats and falsely imprisoned the victim on February 23, 2011, section 654 therefore requires sentence be stayed on the offense found subject to it. (See *People v. Jones* (2012) 54 Cal.4th 350, 353; *People v. Deloza* (1998) 18 Cal.4th 585, 592.) Accordingly, we shall order the abstract of judgment be amended to reflect this.

³ Section 654, subdivision (a) provides in relevant part as follows: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

III. DISPOSITION

The judgment is modified to strike the concurrent sentence imposed for false imprisonment on count 4 and instead to provide that sentence be stayed on that count under section 654. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and to forward a copy of the amended abstract to the California Department of Corrections and Rehabilitation.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.